

---

**OPINION OF THE PUBLIC ACCESS COUNSELOR**

---

BOBBIE DELORES WESTBROOK, ET.AL,<sup>1</sup>  
*Complainant,*

v.

CARMEL CLAY SCHOOLS,  
*Respondent.*

---

Formal Complaint No.  
21-FC-89

---

Luke H. Britt  
Public Access Counselor

---

This advisory opinion is in response to a formal complaint alleging the Board of Trustees for Carmel Clay Schools violated the Open Door Law.<sup>2</sup> Attorney Andrew Manna filed an answer on behalf of the CCS. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to the formal

---

<sup>1</sup> This office received 15 complaints regarding the same meeting. A list of complainants is available upon request; however, all allegations were substantively similar.

<sup>2</sup> Ind. Code § 5-14-1.5-1-8.

complaint received by the Office of the Public Access Counselor on June 28, 2021.

## **BACKGROUND**

In this case we explore the requirements of the Open Door Law (ODL) in terms of meeting capacity and security presence at school board meetings.

On June 28, 2021, the Board of Trustees for Carmel Clay Schools (CCS) held a properly noticed public meeting. Due to COVID-19 concerns, CCS limited capacity to 33 attendees. Consequently, CCS denied a group of approximately 40 individuals access to the meeting. CCS cited Governor Holcomb's Executive Order 21-15, which encouraged social distancing, as the justification for the restrictions.

Additionally, police were present to manage crowd control and entry into the building, which was locked after the room reached capacity. The complainants argue a large crowd was reasonably anticipated based upon prior meetings. Therefore, they argue a larger crowd could have been accommodated by moving the meeting to a larger venue. Some complainants also implied the police presence may have been a barrier to access.

This office received the complaints immediately following the meeting on June 28 and for several weeks thereafter.

For its part, CCS contends the COVID-19 protocols put in place were implemented for the safety of school personnel and attendees and were based on CDC and state guidance. It cites prior public access counselor opinions regarding capacity limitations and suggests it did not have a reasonable

expectation of a larger than normal crowd. Additionally, CCS asserts that it broadcast the meeting the next day.

## ANALYSIS

### 1. The Open Door Law

The Open Door Law (ODL) requires public agencies to conduct and take official action openly, unless otherwise expressly provided by statute, so the people may be fully informed. Ind. Code § 5-14-1.5-1. As a result, the ODL requires all meetings of the governing bodies of public agencies to be open at all times to allow members of the public to observe and record the proceedings. *See* Ind. Code § 5-14-1.5-3(a).

Carmel Clay Schools (CCS) is a public agency for purposes of the ODL; and thus, is subject to the law's requirements. Ind. Code § 5-14-1.5-2. Moreover, CCS's board is a governing body for purposes of the ODL. *See* Ind. Code § 5-14-1.5-2(b).

As a result, unless an exception applies, all meetings of the Board must be open at all times to allow members of the public to observe and record.

#### 1.1 ODL definitions

Under the ODL, "meeting" means "a gathering of a majority of the governing body of a public agency for the purpose of taking official action upon public business." Ind. Code § 5-14-1.5-2(c).

"Official action" means to: (1) receive information; (2) deliberate; (3) make recommendations; (4) establish policy; (5) make decisions; or (6) take final action. Ind. Code § 5-14-1.5-

2(d). Notably, the ODL defines “final action” as “a vote by the governing body on any motion, proposal, resolution, rule, regulation, ordinance or order.” Ind. Code § 5-14-1.5-2(g). The ODL also mandates a governing body to take all final action at public meeting. *See* Ind. Code § 5-14-1.5-6.1(c).

Additionally, “public business” means “any function upon which the public agency is empowered or authorized to take official action.” Ind. Code § 5-14-1.5-2(e).

## **2. Complainants’ claims**

The crux of the dispute is whether the Carmel Clay Schools should have anticipated a larger than normal crowd and moved the school board meeting to a larger space to accommodate more people.

If all meetings are to be open at all times so that the public may observe, then those excluded from the meeting have a legitimate grievance. Whether CCS acted contrary to the law, however, is more nuanced.

Prior public access counselor opinions in this regard have hinged on a reasonable expectation of crowd size: did the governing body have advance notice that a large number of attendees would be present.

Nothing on the June 28 agenda appears controversial in and of itself. While a COVID-19 reopening plan was set for discussion, an actual mask mandate was tabled until CDC set its recommendations. CCS also provided parents a feedback survey during the development of the plan.

Moreover, the conversation regarding social and emotional learning curriculum was certainly in the community's consciousness but had not yet reached the fever pitch of later in the summer. Notably, nothing of the sort was on the June 28 agenda.

Additionally, CCS held a board meeting two weeks prior on June 14 where empty chairs dotted the crowd. The school board meetings in April and May were well attended but this office did not receive any complaints that the crowd was so large that individuals were unable to attend. Moreover, there have not been any subsequent complaints about meeting exclusions in the time since.

So, the question becomes whether it was foreseeable that a crowd of dozens of potential attendees would show up to a school board meeting in the middle of the summer during a pandemic when nothing particularly noteworthy was on the itinerary.

By all accounts, meetings at the end of June are historically some of the lowest attended of school board meetings. Students and teachers are out of school, families are on vacation, and meeting agendas are usually perfunctory and innocuous.

While unrest was festering in certain corners of the cultural zeitgeist during the run-up to the June 28 meeting, nothing in the information provided particularly indicates CCS was on notice of an abnormal turnout. Undoubtedly, Carmel Clay Schools have larger meetings spaces at its disposal, it is unclear whether those alternatives were necessary prior to the commencement of the meeting.

On the other hand, interested individuals have a legitimate expectation that if they take time to travel to a meeting, they

should be let in. When they are met with locked doors, police, and denied entry, they will be rightfully upset. This is unfortunate and this office does not take those concerns lightly by any means. Unquestionably in hindsight, a failsafe could have included a larger room or a virtual real-time broadcast.

That stated, it was not a closed-door meeting in the sense that no one was let in. Thirty-three members of the community and media were permitted access to observe and record. Meaningful public comment was received. Additional audience members would not have necessarily changed the nature of the proceedings. Nothing was hidden in the sense that the meeting proceeded in secrecy.

Given the circumstances of this one meeting, it does not appear as if CCS should have reasonably known that a large crowd was probable or even likely, thereby necessitating a larger meeting space. If this had been a systemic ongoing issue, this opinion would be different. Without more, however, any prejudice to the public appears to be unintentional.

## CONCLUSION

To be clear, this office has and always will advocate for full, unfettered access to meetings and will never be dismissive toward those seeking to observe and engage in public proceedings.

Before COVID, the right of entry to a public meeting was about as close to an absolute as it gets. Implicit in the public access laws is practicality, however, and COVID has certainly altered what practical meetings look like from a safety perspective. CCS was justified in limiting capacity in this case. The need to move the meeting was not seemingly necessary before the meeting.

Based on the foregoing, it is the opinion of this office that Carmel Clay Schools did not violate the Open Door Law.



Luke H. Britt  
Public Access Counselor